

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Adv. Case No. 08-01789(BRL)

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6 SECURITIES INVESTOR PROTECTION CORPORATION,

7 Plaintiff,

8 v.

9 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC, ET AL.,

10 Defendants.

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13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 March 13, 2013

18 10:13 AM

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20 B E F O R E :

21 HON BURTON R. LIFLAND

22 U.S. BANKRUPTCY JUDGE

23

24 ECR OPERATOR: S. HIBBERT

25

1 Hearing re: Adversary proceeding: 08-01789-brl Securities  
2 Investor Protection Corporation v. Bernard L. Madoff  
3 Investment Securities, LLC, et al., (cc-5230) Motion for an  
4 Order Approving Third Allocation of Property to the Fund of  
5 Customer Property and Authorizing Third Interim Distribution  
6 to Customers

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25 Transcribed by: Jamie Gallagher

1 A P P E A R A N C E S :  
2 SECURITIES INVESTOR PROTECTION CORPORATION  
3 General Counsel for SIPC  
4 805 15th Street, N.W.  
5 Suite 800  
6 Washington, DC 20005  
7

8 BY: KEVIN H. BELL, ESQ.  
9

10 BAKER HOSTETLER  
11 Attorney for  
12 45 Rockefeller Plaza  
13 New York, NY 10111  
14

15 BY: DAVID J. SHEEHAN, ESQ.  
16  
17  
18  
19  
20  
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1 P R O C E E D I N G S

2 THE COURT: Be seated, please.

3 THE CLERK: SIPC v. BMIS.

4 MR. SHEEHAN: Good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. SHEEHAN: David Sheehan, Baker Hostetler for  
7 the trustee, Irving Picard. Excuse me.

8 MR. BELL: Kevin Bell for the Securities  
9 Investment Protection Corporation.

10 MR. SHEEHAN: Your Honor, this is a fairly  
11 momentous day in the continuing history, I think, of the  
12 Madoff case. We are here today on the return date of the  
13 Trustee's motion for approval by this Court of his third  
14 interim allocation distribution to customers with allowed  
15 claims.

16 The history is pretty well laid out in the papers  
17 that we submitted to Your Honor. There's only a few things  
18 that I'd like to highlight, and to also note that we did  
19 receive on item that could be characterized as an objection,  
20 but I think that would be inappropriate. I think Mr. Gross  
21 is basically complaining, as he has many times, to the fact  
22 that his claim was denied. And in that form, he has  
23 suggested that this distribution should not take place.  
24 It's not directed at, and we had filed papers in response to  
25 that.

1 THE COURT: Is Mr. Gross here today? No,  
2 apparently not.

3 MR. SHEEHAN: So, other than that, I have no  
4 comment and I know Your Honor will do whatever is necessary  
5 with regard to that objection. I don't see how it in any  
6 way could withstand scrutiny in terms of what we're trying  
7 to accomplish here today.

8 But in any event, what we have before Your Honor  
9 is, as I say, the third interim allocation. We've had two  
10 prior allocations. As a result of today's allocation, we  
11 will be distributing -- the trustee will be distributing  
12 over \$500 million.

13 I think it's important to note that that is as a  
14 result of a settlement that Your Honor approved some months  
15 ago, the Tremont settlement for over a billion dollars, but  
16 through various appeals, we could not make a distribution of  
17 that until now. Those appeals have all been resolved.  
18 We've added that to the amount of the numerator that we  
19 could then distribute. As we lay out in great detail, Your  
20 Honor knows that we have in fact collected \$9.3 billion and  
21 to date have distributed well over 4 billion of that through  
22 two interim distributions.

23 Today will take us to over \$5.4 billion in terms  
24 of distributions to customers out of that 9.3.

25 The reason, as Your Honor knows from our papers

1 and from the statute, is that we cannot distribute all the  
2 funds, not only because there are certain litigations that  
3 are outstanding, we believe the appeal is yet to be fully  
4 finalized. There are -- although we did have that approved  
5 by the Second Circuit at the time, within which to take sure  
6 (indiscernible - 00:02:51) has not run, so we did not  
7 include that.

8 There are other types of settlements like that  
9 that are out there and other litigations deemed determined  
10 as we explained, where we have a 502(d) claim against many  
11 of the bad faith claimants.

12 THE COURT: Assuming that cert. is denied by the  
13 Supreme Court, does this allegation comprehend the addition  
14 of what's being held up based upon the request for cert? Or  
15 do you have to come back and include a distribution in the  
16 -- a supplemental application?

17 MR. SHEEHAN: We're going -- we did not include  
18 it, Your Honor, because we have other matters that are also  
19 pending that we anticipate fully that there will be a second  
20 interim distribution of almost equal, if not exceeding the  
21 magnitude of today's.

22 And we thought that rather than giving them out in  
23 small parcels, we would give them out in more substantial  
24 fashion. So, that's what we've done with that. So, it's  
25 not included in today's application. It will be included

1     shortly in another application that we'll make to Your  
2     Honor, which will include that as well as other amounts that  
3     we've -- will be available for the trustee to distribute, as  
4     I say, as much as we've done today, if not exceeding that  
5     amount. So, we've made that decision, Your Honor.

6             If Your Honor thinks that we should make an  
7     amendment to this allocation and bring it forward faster, we  
8     can certainly do that. It's probably at about -- adding to  
9     the distribution, which in this case is a lot of money. And  
10    we understand that. Today is about 5 percent. \$500 million  
11    is -- it's about a penny a hundred million.

12            In any event, Your Honor, just a decision we made  
13    in connection with other things that are happening when it  
14    was happening, Your Honor, so that's what we did.

15            We also were concerned quite frankly about  
16    receiving objection from someone who is handling that  
17    (indiscernible - 00:04:41), who's had a history of objecting  
18    in these proceedings. And I'm not suggested that Your Honor  
19    would have countenanced that objection, but we wanted to get  
20    this through as quickly as possible to get this \$500 million  
21    out. And we made that decision as well.

22            So, in any event, Your Honor, where we are today  
23    is as I said, we have before Your Honor an application for a  
24    third interim allocation. That will bring the full  
25    allocation to date, distributions I should say, to \$5.4

1 billion. We will have fully satisfied over 50 percent of  
2 the allowed claims.

3 We have -- I think Your Honor demonstrated that  
4 this is only the beginning. Even though we're five years  
5 into the case, we've only collected \$9.3 billion out of the  
6 17. We believe over the next 18 months we will collect many  
7 billions more of that through litigation, as well as through  
8 settlements, and there will be more distributions of this  
9 nature forthcoming, not only, as I say, in the next  
10 succeeding months of this year, but certainly over the next  
11 18 months as well.

12 So, as I said, a momentous day, I think, in the  
13 day of the history of this case. And I would ask that Your  
14 Honor approve the order that we've submitted to you.

15 THE COURT: Does anyone want to be heard?

16 MR. BELL: Your Honor, I'm -- Kevin Bell on behalf  
17 of SIPC.

18 This allocation's -- and interim distribution's in  
19 compliance not only with the provisions of SIPA, but it's  
20 purposes. I would note its purpose at 78, triple F,  
21 (a)(1)(B) and its provision at triple F-2(c)(1)(B) and (C).

22 This allocation's in constinence [sic] with our  
23 prior discussions with the Court on the first two  
24 allocations. SIPC's goal always is to get to 100 percent.  
25 This will get to about 43 cents on the dollar, more than



1 1,106 accounts with allowed claims will be fully satisfied,  
2 which is more than 50 percent as Mr. Sheehan said.

3 SIPC urges the Court to approve this motion to  
4 enable the trustee to get another almost five cents in the  
5 hands of the victims who have claims that have been allowed.

6 Thank you, Your Honor.

7 THE COURT: Does anyone else want to be heard?

8 Well, with respect at first to the objection  
9 that's been filed. To the extent it's an objection, it is  
10 apparently more in the nature of a reaction to the claims  
11 adjudication process and the venue for the determination of  
12 the gross claims still remains open to them.

13 There's been a determination, but the proceedings  
14 and the procedures exist. They've appeared, as I understand  
15 it, in the District Court.

16 So, suffice it to say that the document that's  
17 filed is really misplaced and perhaps is misfired as it  
18 inappropriately seeks to object to the distribution to a  
19 large, large number of victims. And as an aside, some of  
20 the victims have already sold off to claims purchasers. So,  
21 indeed there is a variant interest in the distribution here.

22 I do commend to anybody who's really interested to  
23 take a look at the motion papers and the description and the  
24 summary of this request for an allocation -- this  
25 allocation, because it contains a lot of the history and the

1 basis for going forward that's just been described by Mr.  
2 Sheehan here this morning.

3 And it leads me to ask a question with respect to  
4 some of the items contained in the motion, which is really a  
5 report -- a condition report with respect to the  
6 administration of the Madoff estate.

7 And that is, for purposes of distribution, just  
8 take for example distributees who receive funds out of  
9 forfeiture funds that are in the hands of clarities, and  
10 that will be made available to -- for distribution, which I  
11 would imagine include distributees that have also filed  
12 claims here and have a potential for recovery here under  
13 claims allowance allocation.

14 Is there the intention, as it's expressed here on  
15 page 23, of applying a hodgepodge rule, which means you  
16 can't get more than you claimed for if you get funds coming  
17 to you from other estates or from other distributions?

18 MR. SHEEHAN: Yes, Your Honor. As we do lay out  
19 in the application, what we have done since the appointment  
20 of Mr. Greedan (ph) as special master, the trustee and his  
21 counsel met with him on more than one occasion. I can state  
22 for the record that the trustee has supplied a great deal of  
23 information to Mr. Greedan to assist him in this endeavor.

24 THE COURT: I just used that as one example, but  
25 my thinking goes beyond that.

1 MR. SHEEHAN: Well --

2 THE COURT: There are claimants who have brought  
3 third party actions. It's quite notorious about the  
4 litigation that's ongoing with respect to the potential for  
5 distributions and those third party actions. And many of  
6 those distributees, I imagine, are also claimants.

7 Is the hodgepodge rule going to apply there?

8 MR. SHEEHAN: Well, yes it will, Your Honor. As a  
9 matter of fact, recently there was a settlement that's taken  
10 place where the Fairfield pension settled the case in the  
11 Maxim (ph) case, which is currently pending and is on appeal  
12 in the Second Circuit. We are fully engaged with counsel  
13 there. We have not taken the position of enjoining that.  
14 The amounts are too insubstantial. Again, trustee's  
15 discretion.

16 What we will do, however, is take that -- those  
17 funds into account when we do ultimately make a distribution  
18 to them because they are deemed determined claimant, that we  
19 believe eventually we will settle with them.

20 But they're part and parcel of the whole Maxim  
21 litigation. So, these things get a bit complicated, but we  
22 do exercise, as I say, the trustee's discretion not to  
23 enjoin everything that's going on out there. As Your Honor  
24 well knows, there are literally dozens and dozens of  
25 litigations. We're not going to enjoin all of those, but we

1 are going to take into account that moneys have been  
2 obtained by those individuals and to the extent that we can  
3 determine that and make an appropriate adjustment, which we  
4 will in cooperation with counsel for those claimants, those  
5 adjustments will be made so that people -- the hodgepodge  
6 rule will apply. We will not have people receiving 110 or  
7 120 percent of the claim.

8 THE COURT: Well that may be news for some claims  
9 purchasers.

10 MR. SHEEHAN: Pardon, Your Honor?

11 THE COURT: That may be news to come claims  
12 purchasers.

13 MR. SHEEHAN: Well, you know -- as Your Honor  
14 knows, and I'm very happy to state this in open court that  
15 they're on their own. That's up to them to protect  
16 themselves. That's not the trustee's job or anyone else's.  
17 If they haven't saw through all of the ramifications of  
18 what's occurring in this courtroom and paid attention to it,  
19 well, that's unfortunately their lookout so to speak, it's  
20 not ours.

21 THE COURT: Very well. Does anyone else want to  
22 be heard?

23 There's clear or clarient [sic] cry out for the  
24 Court to move quickly with this distribution, which does  
25 help the victims and those who are allied with the victims.

1                   Your application is granted. The Gross filing,  
2                   which if you want to consider it as an objection, is  
3                   overruled.

4                   MR. SHEEHAN: Thank you, Your Honor. Can I submit  
5                   the order?

6                   THE COURT: Yes. I have approved the order.

7                   MR. SHEEHAN: Thank you very much, Your Honor.

8                   THE COURT: Thank you.

9                   MR. SHEEHAN: Have a good day.

10                  (Whereupon these proceedings were concluded at 10:26  
11                  A.M.)

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I N D E X

RULINGS

Page Line

Motion for an Order Approving Third 13 1

Allocation of Property to the Fund of

Customer Property and Authorizing Third

Interim Distribution to Customers

C E R T I F I C A T I O N

I, Jamie Gallagher, certify that the foregoing transcript is  
a true and accurate record of the proceedings.

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: March 14, 2013